1980

Matthew C. Harris and Gary S. Harris v. Utah Transit Authority and Lester Lorenzo Loosemore : Brief of Appellant

Utah Supreme Court

Merlin R. Lybbert; Paul C. Droz; Snow, Christensen & Martineau; Attorneys for Appellants;
Timothy R. Hanson; Hanson, Russon, Hanson & Dunn; Attorneys for Respondents;

IN THE SUPREME COURT OF THE STATE OF UTAH

- -

MATTHEW C. HARRIS
and GARY S. HARRIS,

Plaintiffs-Appellants,

vs.

No. 17042

THE UTAH TRANSIT AUTHORITY
and LESTER LORENZO LOOSEMORE,

Defendants-Respondents.

- -

APPELLANT'S BRIEF

- -

APPEAL FROM JUDGMENT OF THE SECOND JUDICIAL
DISTRICT COURT OF WEBER COUNTY
HONORABLE RONALD O. HYDE

- -

MERLIN R. LYBBERT
PAUL C. DROZ
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Appellants
Matthew C. Harris and
Gary S. Harris
700 Continental Bank Building
Salt Lake City, Utah 84101
Telephone: 521-9000

TIMOTHY R. HANSON
HANSON, RUSSON, HANSON & DUNN
Attorneys for Respondents
Utah Transit Authority and
Lester Lorenzo Loosemore
650 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101

IN THE SUPREME COURT OF THE STATE OF UTAH

- -

MATTHEW C. HARRIS
and GARY S. HARRIS,

Plaintiffs-Appellants,

vs.

No. 17042

THE UTAH TRANSIT AUTHORITY
and LESTER LORENZO LOOSEMORE,

Defendants-Respondents.

- -

APPELLANT'S BRIEF

- -

APPEAL FROM JUDGMENT OF THE SECOND JUDICIAL
DISTRICT COURT OF WEBER COUNTY
HONORABLE RONALD O. HYDE

- -

MERLIN R. LYBBERT
PAUL C. DROZ
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Appellants
Matthew C. Harris and
Gary S. Harris
700 Continental Bank Building
Salt Lake City, Utah 84101
Telephone: 521-9000

TIMOTHY R. HANSON
HANSON, RUSSON, HANSON & DUNN
Attorneys for Respondents
Utah Transit Authority and
Lester Lorenzo Loosemore
650 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

NATURE OF THE CASE

This is a suit for recovery of damages for personal injuries and resulting damages sustained by plaintiff Matthew C. Harris (and his father, plaintiff Gary S. Harris) when the jeep in which Matthew was riding collided with a Utah Transit Authority bus.

DISPOSITION BY THE LOWER COURT

Following trial by jury, a verdict was rendered in favor of defendants finding them not negligent. Judgment was entered accordingly. Plaintiffs made a Motion for a New Trial, which Motion was denied by the trial court.

RELIEF SOUGHT ON APPEAL

Appellants Matthew C. Harris and Gary S. Harris seek reversal of the trial court's Judgment.

STATEMENT OF FACTS

On March 7, 1977, at approximately 8:15 a.m., at the T-intersection of 1700 North on Washington Blvd., in North Ogden, Utah, a collision occurred betweeen a jeep, driven by Rodney C. Talbot, and a Utah Transit Authority (U.T.A.) bus, driven by defendant Lester Lorenzo Loosemore (550, 552, 629-30).[1]

Plaintiff Matthew Harris was 17 years of age and was riding as a passenger in the Jeep which was being driven

---

[1] References to the Record are indicated by parenthetical page numbers.

by Rodney C. Talbot (547, 665). Matthew was riding in the outside passenger seat of the Jeep (547). Another boy, Kevin Della Lucia, was sitting between Matthew and Talbot (547). The boys were on an errand for their high school teacher (546). The jeep was in good mechanical condition and the day was dry and clear (548). The jeep was travelling with the flow of traffic, between 40 and 50 m.p.h. (521, 549, 567, 577, 591, 728).

Washington Boulevard, at the point of the collision, has four traffic lanes, two northbound and two southbound (Plaintiffs' Exhibit No. 1). The impact occurred in the outside, southbound lane (Plaintiffs' Exhibit No. 1).

The U.T.A. bus was stopping, or had just stopped, to pick up a passenger, when the collision occurred (561). The U.T.A. bus was positioned with its right outer wheel four inches off the pavement (514, Plaintiffs' Exhibits Nos. 3-16). The bus obstructed a substantial part of the outside travel lane (629).

There was a shoulder of packed road-base adjacent to the roadway (518). The condition of this shoulder was such that on the day of the accident, a bus could have pulled off the roadway onto the shoulder (503, 518-19, 624-25).[2]

---

[2] Police photographs clearly illustrate the accident scene (Plaintiffs' Exhibits Nos. 3-16). Other photographs (Plaintiffs' Exhibits Nos. 1, 17-20), and a scale diagram (Plaintiffs' Exhibit No. 2) further illustrate the scene.

Talbot, driver of the jeep, did not recall seeing the bus ahead of him until just before the collision (558). At that time, he looked up and saw the bus, glanced at his rear-view mirror, swerved left and braked to avoid the bus (550, 558).

In the course of this maneuver, the right side of the Jeep struck the left rear corner of the bus in such a way as to pinch the right arm of Matthew Harris between the bus and the Jeep, effectively severing the arm between the shoulder and elbow, with resulting severe and permanent injuries (535, 660-61, 668-75). Matthew has no recollection of the collision whatsoever (667).

During trial, the court excluded an exhibit offered by plaintiffs, which showed the repair history, subsequent to the date of the accident, of the involved Utah Transit Authority bus (698-700).

The court ruled that Rodney Talbot, driver of the Jeep in which plaintiff Matthew Harris was a passenger, was negligent as a matter of law, but submitted the issue of Loosemore's negligence to the jury (253). The court denied plaintiff's motion that the court find defendant Loosemore negligent as a matter of law (817).

The case was submitted to a jury, which returned its verdict finding that defendants were not negligent (235). Judgment was entered on the verdict (406). Plaintiffs moved for a new trial, which was denied (407, 476).

ARGUMENT

POINT I

THE COURT ERRED IN RULING AS A MATTER OF LAW THAT RODNEY TALBOT WAS NEGLIGENT

The court ruled that Rodney Talbot was negligent as a matter of law, and so instructed the jury (253). The court could only make such a ruling if it determined that reasonable minds could not differ on the issue of Talbot's negligence. Newton v. Oregon Short Line R. Co., 43 Utah 219, 134 P.567 (1913).

However, there was substantial evidence in the record which, if believed, could have pursuaded reasonable minds that Talbot was not negligent. Such evidence on this issue consisted, in part, of the following.

There was substantial evidence that there were no tail lights or signals operating on the rear of the bus immediately prior to the accident. Police Chief Earl Carroll (504-05), Rodney Talbot (551), Kevin Della-Lucia (568), Helen Hollingshead (578), Robert Freston (588) and Gloria Myers (593, 594) all observed the rear of the bus either immediately before the accident, or within minutes thereafter. All testified either that they recalled no lights, or that they specifically looked for lights on the bus and saw none. No witness saw lights on the bus at the time of the accident or immediately thereafter.

Additionally, plaintiffs' Exhibits No. 40 and 41, received in evidence, were the relevant maintenance records of the involved bus for the time period prior to the accident, and a summary thereof (218-19). These exhibits showed that the involved bus had experienced several electrical failures in the lighting and related systems prior to the accident.

Emmett Quinn, an expert in the field of accident reconstruction, testified that, absent stop signal lights, the only way Talbot would perceive that the bus was stopping was the increasing size of the bus, i.e., the increasing portion of Talbot's "cone of perception" taken by the bus (738). Quinn testified that until Talbot was relatively close to the bus, it would not appear to him to be stopping (738, 750). At the point Talbot perceived that the bus was stopping it had suddenly become three times larger in his "cone of perception" (737). Quinn testified that the very purpose of tail lights is to warn a person in the rear of a slowing or stopping maneuver (738). Without such lights, a slowing or stopping maneuver is very difficult to perceive until the driver in the rear is relatively close to the stopping vehicle (738, 750). In fact, Quinn testified that from the point where Talbot perceived the bus and reacted, he made the best possible effort to avoid the accident (740-41).

In addition to the foregoing evidence, reasonable minds could have decided that, under the circumstances of this case, Talbot was not negligent simply because he may have momentarily looked away from the road.

Utah law requires that a vehicle have operating rear stop signal lights.[3] Additionally, Utah Law requires that a vehicle not stop upon the paved part of the highway when it is practical to stop off such paved part of the highway.[4]

While there was some evidence from which it could be inferred that the tail lights on the bus were operating, for purposes of testing the propriety of a directed finding of negligence against Talbot we must look at any evidence which would contradict or prevent such a finding. In that regard, as discussed above, there was substantial evidence that there were no bus tail lights operating at the time of the accident.

As the purpose of requiring stop signal lights is to prevent just the type of accident which happened in this case, it follows that without stop signal lights, these

---

3 Section 41-6-121.10, Utah Code Ann. (1953); Instruction No. 12 (251).

4 Section 41-6-101, Utah Code An. (1953); Instruction No. 11 (249-50).

types of accidents can happen without any negligence on the part of the driver to the rear.

Similarly, there was substantial evidence that Loosemore could have pulled the bus completely off the roadway.[5] The purpose of requiring a stopped vehicle to pull completely off the roadway is to prevent just the type of accident which occurred here. It follows that where a vehicle fails to pull off the roadway as required, and where that vehicle has no tail lights, these type of accidents can happen without any negligence on the part of the driver in the rear.[6] In this regard, Loosemore testified that he never saw the jeep

---

[5] Loosemore himself testified that on prior occassions he had pulled off the roadway at that point farther than he did at the time of accident (624). He testified that photographs taken at the scene showed that he could have pulled off the road 10 more feet (625). He testified that he stopped 3-4 feet from the waiting passenger (627). He stopped where it would be convenient for the passenger, rather than at a designated stopping area (139).

Rudolph Limpert, accident reconstruction expert, testified that if the bus had pulled off even two additional feet, the accident would not have occurred (328). Officer Cragen testified similarly (529).

Chief Carroll (503), Officer Cragen (518), and several others testified that there was room on the shoulder for the bus to have pulled completely off the roadway. In fact, Plaintiffs' Exhibit No. 5 shows a fire truck parked on the shoulder next to the bus.

[6] This is particularly true, where, as here, the road was posted for 50 m.p.h., was straight, and had no semaphores or stop signs for several miles (529).

behind him prior to stopping, and that he had just stopped when he heard the screaching of brakes (629). He knew that his bus obstructed a substantial part of its lane (629).

Finally, Stapley v. Salt Lake City Lines, 18 Utah 2d 1, 414 P.2d 88 (1966), demonstrates that negligence should not have been directed by the court in this case.

Stapley involves nearly identical facts to the instant case. The day was clear; the bus stopped with the right wheels about one foot off the highway; the bus could have pulled off farther onto a gravel and dirt shoulder, but did not do so for the convenience of the boarding passengers; any tail signal was obscured by dirt; and plaintiff, a passenger in the following car, was injured in a rear end collision with the bus. The Utah Supreme Court affirmed a jury verdict for plaintiff, stating:

> [W]e think the competent admissible evidence favorable to the victor, as abstracted above, was such as justified reasonable men to arrive at the verdict. This certainly is not factually the strongest case in the world. We are constrained to believe we would have sustained a verdict for defendant, if it had been rendered. But under our rules of appellate review, where the jury is arbiter of the facts, negligence, contributory negligence, cause of the injury, and the like, we decide this case as we do. 414 P.2d at 89 (emphasis added).

Thus, the Stapley case squarely holds that under nearly identical facts the jury, not the court, should decide the

facts, negligence and contributory negligence. It was therefore error for the court to have directed negligence against Talbot.

POINT II

THE COURT SHOULD HAVE RULED DEFENDANT LOOSEMORE NEGLIGENT AS A MATTER OF LAW.

As discussed in Point I, infra, the jury was properly the arbiter of the facts and negligence. However, the court ruled Talbot negligent as a matter of law, and the evidence of Loosemore's negligence was at least as strong as Talbot's. Therefore, as the court ruled Talbot negligent, it should have also ruled Loosemore negligent. Plaintiffs moved the court for such a finding at the conclusion of defendants' evidence, which motion was denied (817).

Several statutes set the standard of care required of Loosemore. Those dealing with pulling off the highway are discussed above.

In General Ins. Co. of America v. Lewis, 121 Utah 440, 243 P.2d 433 (1952), the court discussed the statute requiring stopping off the highway, stating that it applied to those "cases where the driver stops his car on the highway from his own choice and has an opportunity to select the place and conditions of his stop." 243 P.2d at 434.

Many reported cases deal with statutes of other states which are identical in wording with §41-6-101, Utah Code Ann. (1953). For example, Chard v. Bowen, 427 P.2d 568, 572 (Idaho 1967), discusses those factors which might excuse compliance with the statute, stating:

> To prove that a violation of a statute was excusable or justifiable so as to overcome the presumption of negligence, the evidence must support a finding that the violation resulted from causes or things that made compliance with the statute impossible, something over which the person charged with the violation had no control which placed his vehicle in a position violative of the statute, or an emergency not of such person's own making by reason of which he fails to obey the statute, and that the person who violated the statute did what might reasonably be expected of a person of ordinary prudence who desired to comply with the law, acting under similar circumstances. Id. at 574 (emphasis added).

Certainly in the instant case there was no evidence of the factors indicated in Chard which might excuse compliance with the statute. Therefore, a directed finding of negligence was appropriate.

The same conclusion was reached in Kelly v. Montoya, 470 P.2d 563, 566 (N.M. 1970):

> Since it is foreseeable that blocking the highway may cause other persons to have accidents, a violation of the statute which prohibits such blocking is negligence per se.

There is no question that Loosemore could have pulled off the roadway the two additional feet which would have

prevented this accident. His failure to do so, in violation of the statute in question, was sufficient for a directed finding of negligence, particularly when such a finding was made as to Talbot.

Additionally, Loosemore violated his duty to keep a lookout for persons, or other vehicles reasonably to be seen.[7]

Loosemore testified that by using his mirrors he could see all traffic behind him. Yet he testified that he failed to see Talbot's Jeep (629-30).

Somehow he did see the light-colored station wagon next in line behind the Jeep, but he did not see Freston's pickup truck, Myers' car, or any of the cars behind Myers (618). Certainly Loosemore's failure to at least see the vehicle first affected by his maneuver, i.e. the Jeep, demonstrates negligence on his part in failing to keep a proper lookout.

The evidence of Loosemore's failure to keep a proper lookout, and failure to pull off the roadway when he could have done so, is at least as compelling for a directed finding of negligence as a evidence regarding Talbot, and the court erred in refusing to so rule.

---

[7] Instruction to the Jury No. 11 (249-50) states this duty.

POINT III

INSTRUCTION NO. 14 IMPROPERLY LED THE JURY TO ITS CONCLUSION

Instruction No. 14 (253) states in part:

> To be an independent intervening cause that would relieve another's negligence from being a proximate cause, it must be negligence that was not foreseeable.
>
> In that regard, you are instructed that the driver of the Jeep, Rodney Talbot, was negligent as a matter of law, and if you find that he observed the bus stopped upon the highway, or, under the circumstances should have observed the bus, but because of his negligence failed to do so in time to avoid the accident, then you are instructed that the negligence on his part was the sole proximate cause of the collision. (Emphasis added).

This instruction deals with both negligence and proximate cause. Certainly those two issues are difficult for a juror to separate.

The cited portion of Instruction No. 14 leaves a juror with no reasonable alternative but to find Talbot solely liable. It holds Talbot negligent, and adds that if he should have seen the bus, but negligently failed to do so in time to avoid the accident, then he is solely liable.

That statement of the law was expressly rejected in Hillyard v. Utah By-Products Co., 1 Utah 2d 143, 263 P.2d 287 (1953):

> In applying the test of foreeseability to situations where a negligently created pre-existing

condition combines with a later act of negligence causing an injury, the courts have drawn a clear-cut distinction between two classes of cases. The first situtation is where one has negligently created a dangerous condition [such as parking the truck] and a later actor observed, or circumstances are such that he could not fail to observe, but negligently failed to avoid it. The second situation involves conduct of a later intervening actor who negligently failed to observe the dangerous condition until it is too late to avoid it. In regard to the first situation it is held as a matter of law that the later intervening act does interrupt the natural sequence of events and cut off the legal effect of the negligence of the initial actor. This is based upon the reasoning that it is not reasonably to be foreseen nor expected that one who actually becomes cognizant of a dangerous condition in ample time to avert injury will fail to do so. On the other hand, with respect to the second situation, where the second actor fails to see the danger in time to avoid it, it is held that a jury question exists, based on the rationale that it can reasonably be anticipated that circumstances may arise wherein others may not observe the dangerous condition until too late to escape it. The distinction is basically one between a situation in which the second actor has sufficient time, after being charged with knowledge of the hazard, to avoid it, and one in which the second actor negligently becomes confronted with an emergency situation. 263 P.2d at 292 (emphasis added).

The court's instructions hold Talbot soley liable if he "should have observed the bus", a negligence standard. Hillyard specifically rejects that conclusion in its "second situation", cited above, where the second actor negligently failed to observe the dangerous condition until too late to avoid it.

Hillyard was recently reaffirmed in Watters v. Querry, 588 P.2d 702 (Utah 1978). In Watters, the trial court gave an instruction similar to Instruction No. 14 in this case:

> If a driver creates a dangerous condition with a motor vehicle, but this condition is such that another driver, exercising reasonable care, should have observed and avoided the dangerous condition, then the negligence of the later driver is an independent intervening cause, and therefore the first driver cannot be a proximate cause of the collision. 588 P.2d at 703.

The Supreme Court reversed, holding the above instruction to be error. Watters required a clear instruction to the jury of the possibility that the first actor:

> should have foreseen that, in traffic such as there was on that highway, some momentarily inattentive driver following her would not be able to react and brake quick enough to avoid collision with her car or the car behind hers.

Hillyard and Watters were recently reaffirmed in Jensen v. Mountain States Tel. and Tel. Co., No. 16417 (Utah 1980), in which the Supreme Court reversed a summary judgment for defendant, stressing the presence of a jury issue of foreseeability.

Concededly Instruction No. 14 presents some foreseeability issues to the jury. However, it erroneously does so in the context of holding Talbot negligent as a matter of law, and it uses language rejected in Hillyard and Watters. Instruction No. 14 left the jury no choice but to find Talbot solely liable, which is the effect of their decision.

Plaintiffs' submitted their proposed Jury Instruction No. 30 (354, 356), correctly stating the law in this regard, which the court rejected.

POINT IV

THE JURY INSTRUCTIONS, TAKEN AS A WHOLE, WERE IMPROPER OR INCOMPLETE, AND OVER-EMPHASIZED DEFENDANTS' THEORY OF THE CASE.

A. The court held Talbot negligent as a matter of law, but failed to instruct the jury that such negligence was in no way imputed to or attributable to plaintiff Matthew Harris, passenger in Talbot's Jeep. Caperon v. Tuttle, 100 Utah 476, 116 P.2d 402 (1941); Hudson v. Union Pac. R.R., 120 Utah 245, 233 P.2d 357 (1951); Nyman v. Cedar City, 12 Utah 2d 45, 361 P.2d 1114 (1961); Hall v. Blackham, 18 Utah 2d 164, 417 P.2d 664 (1966). Such instruction was requested by plaintiffs in their proposed Instruction No. 21 (343).

B. There was no evidence of negligence on the part of plaintiff Matthew Harris. Plaintiffs requested that the court rule as a matter of law that Matthew Harris was not negligent, and to so instruct the jury in plaintiffs' proposed Instructions No. 1 and 21 (321-22, 343). The court gave no such instruction.

C. The court instructed the jury regarding defendants' theory of the case in Instruction No. 14 (253). However, the court failed to instruct the jury as to plaintiffs' theory as requested in plaintiffs proposed Instruction No. 1 (321-22).

D. Although the court ruled that Talbot was negligent as a matter of law, it did not instruct the jury to disregard the fact that Talbot was not a defendant in the case. Plaintiffs requested such an instruction in plaintiffs' proposed Instruction No. 20 (342).

E. In questioning of several witnesses defendants' counsel elicited testimony that even though the bus blocked one southbound lane, a second southbound lane was unobstructed (For example, 532-33, 559-60). Such testimony could have been interpreted by the jury to have lessened or negated Loosemore's duty to have pulled completely off the roadway if practical to do so. In fact Loosemore's duty was in no way lessened by such fact. McElhaney v. Rouse, 415 P.2d 241 (Kan. 1966). See also, Turner v. Silver, 587 P.2d 969 (N.M. 1978); General Ins. Co. of America v. Lewis, 121 Utah 440, 243 P.2d 433 (1952). The court failed to give such an instruction although plaintiffs made such a request in plaintiffs' proposed Instruction No. 30 (355).

The court's foregoing instructions, or failures to instruct, when taken together improperly and incompletely instructed the jury. When added to the court's finding that Talbot was negligent as a matter of law, the court's overall instructions improperly led the jury to its conclusion.

POINT V

THE COURT ERRED IN EXCLUDING PLAINTIFFS' EXHIBITS NO. 42 AND 43.

Plaintiffs offered into evidence Exhibits No. 42 and 43 (224). These consisted of several relevant maintenance records or invoices of the involved bus for the time period subsequent to the accident, and a summary thereof (Exhibit 43, the Summary, is located at page 441-42 of the Record). The court excluded both exhibits. The court's exclusion of these exhibits was error.

Plaintiffs offered these exhibits for the purpose of demonstrating the possibility that the tail lights of the bus were not functioning at the time of the accident. This possibility was disputed by defendants.

In Lawlor v. Flathead, 582 P.2d 751, 755 (Mont. 1978), the court held such evidence admissable for the purpose of showing the existence of a condition:

> It is the general rule that evidence of subsequent repairs or precautions taken after an accident or injury is inadmissible as proof of negligence at the time of the accident or injury. 29 Am.Jur.2d, Evidence, §275. However, where the evidence is not admitted as proof of negligence but, rather, to establish the physical conditions existing at the time of the accident such evidence may be properly admitted.

Defendants presented evidence that the bus' tail lights were working when Linda Charlesworth Marx boarded the bus in North Ogden, several miles from the accident

scene (807). Loosemore testified that he turned on the "flashers" after the accident. Yet, plaintiffs presented several witnesses who testified that, at the time of the accident and immediately thereafter, there were no lights on the bus.[8] Chief Carrol testified that there were no lights when he arrived at the scene minutes after the accident, but that after he started taking photographs the lights came on (504-05).

Under these facts it was relevant to show subsequent electrical failures to demonstrate that there could have been such a failure at the time of the accident.

The proposed exhibits showed, in part, that in May, 1977, just over two months after the accident, the turn signals were out. In September, 1977, there was a short in the headlights. In October, 1977, the turn signals were out. In January, 1978, the right turn signal failed. In February, 1978, no turn signals. In March, 1978, no turn signals; two bad connections repaired. The very next day, the turn signals were out again; the mechanic repaired grounded wires (441-42).

---

8 See Point I, infra. The braking maneuver of Loosemore, and his setting of the parking brake when he exited the bus should have activated the tail lights at all times relevant, unless a short or other failure intervened.

The foregoing repeated problems are evidence that a short or other problem could have existed at the time of the accident, resulting in the tail lights not functioning. Defendants adamantly denied such possibility.

In Circle K Corp. v. Rosenthal, 574 P.2d 856 (Ariz. 1977), the court allowed similar evidence, holding that "the rule is well established that evidence of a particular fact before or after an act in question may be shown to indicate the existence of that same condition at the time of the accident." Id. at 860.

The same conclusion was reached in Huxol v. Nickell, 473 P.2d 90 (Kan. 1970).

An additional ground was urged by plaintiffs at trial in support of the offered exhibits -- that the subsequent existence of electrical problems was evidence that the defendants had notice of the defect. In Phoenix v. Boggs, 403 P.2d 305 (Ariz. 1965), the court reached the same conclusion as Lawlor, Circle K, and Huxol, supra. As an additional ground for admitting the evidence of subsequent conduct, the court in Boggs stated:

> However, even if we assume simply for the sake of argument, that defendant is correct in its contention that the evidence introduced was inadmissible to show what actually caused the injury, we would still be disposed to affirm the lower court's decision to admit this same evidence in order to show the prior and subsequent condition of Golden Lane which should have put the City of Phoenix on

notice that one of its streets was in a dangerous condition. That such is the law cannot be doubted.

As the jury found no negligence on the part of the defendants, they must have determined that the tail lights of the bus were operating. See Instruction No. 12 (251). Plaintiffs' proposed maintenance exhibits were relevant evidence that the tail lights might not have been working at the time of the accident, and that defendant Utah Transit Authority had notice of said defect. Therefore, the court erred in excluding plaintiffs' Exhibits No. 42 and 43.

CONCLUSION

The trial court erred in:

1. Ruling Talbot negligent as a matter of law;

2. Refusing to rule defendant Loosemore negligent as a matter of law;

3. Improperly instructing the jury in its Instruction No. 14;

4. Over-emphasizing defendants' case, or improperly or incompletely instructing the jury; and

5. Excluding Plaintiffs' Exhibits Nos. 42 and 43.

For the foregoing reasons, this Court should reverse the Judgment of the trial court.

DATED this 4th day of August, 1980.

SNOW, CHRISTENSEN & MARTINEAU

By Paul C Droz

Paul C. Droz
Attorneys for Plaintiffs-
Appellants
700 Continental Bank Building
Salt Lake City, Utah 84101
Telephone: 521-9000

CERTIFICATE OF SERVICE

I hereby certify that I served two copies of the foregoing Appellants' Brief upon Respondents by mailing the same, postage prepaid, to Timothy R. Hanson, Hanson, Russon, Hanson & Dunn, 650 Clark Leaming Office Center, 175 South West Temple, Salt Lake City, Utah 84101.

DATED this 4th day of August, 1980.

Frances M Hyss